

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL STORMS,

Plaintiff,

- against -

NEW ENGLAND SPORTS NETWORK, INC.

Defendant.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Michael Storms (“Storms” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant New England Sports Network, Inc. (“NESN” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of three exclusive Photographs of the first images of supermodel Adriana Lima and New York Mets pitcher Matt Harvey kissing at a restaurant Miami Beach, owned and registered by Storms, a Miami based photojournalist. Accordingly, Storms seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Storms is a professional photojournalist in the business of licensing his Photographs to online, print, and television stations for a fee, having a usual place of business at 2424 Sugarloaf Lane, Fort Lauderdale, Florida, 33312.

6. Upon information and belief, NESN is a domestic profit corporation duly organized and existing under the laws of the State of Massachusetts, with a place of business at 480 Arsenal Street, Building #1, Watertown, MA 02472. At all times material hereto, NESN has owned and operated a website at the URL: www.NESN.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photographs

7. Storms captured the first images of New York Mets baseball player Matt Harvey and Victoria Secret Model Adriana Lima kissing and eating at the River Yacht Club in Miami (the “Photographs”). True and correct copies of the Photographs are attached hereto as Exhibit A.

8. Storms is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs have a pending United States Copyright Office number. The pending application number is 1-4732084201. See Exhibit B.

10. The fee has been paid to the United States Copyright Office and the works have been deposited with the Copyright Office.

B. Defendant’s Infringing Activities

11. Upon information and belief, on or about March 17, 2017, NESN ran an article on the Website entitled *Adriana Lima Moves On From Julian Edelman, Seen With Mets' Matt Harvey*. See <http://nesn.com/2017/03/adriana-lima-moves-on-from-julian-edelman-seen-with-mets-matt-harvey/>. The article prominently featured the Photographs. A true and correct copy of the article is attached hereto as Exhibit C.

12. The article was written by NESN staff and appears on NESN servers.

13. NESN did not license the Photographs from Plaintiff for its article, nor did NESN have Plaintiff's permission or consent to publish the Photographs on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST NESN)
(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

15. NESN infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. NESN is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by NESN have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

19. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

20. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

21. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant NESN be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
April 10, 2017

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